

# **MCA – October 2005**

## **Lodging Facility Use Tax**

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### **15-65-101. Definitions. For purposes of this part, the following definitions apply:**

(1) "Accommodation charge" means the fee charged by the owner or operator of a facility for use of the facility for lodging, including bath house facilities, but excluding charges for meals, transportation, entertainment, or any other similar charges.

(2) (a) "Campground" means a place, publicly or privately owned, used for public camping where persons may camp, secure tents, or park individual recreational vehicles for camping and sleeping purposes.

(b) The term does not include that portion of a trailer court, trailer park, or mobile home park intended for occupancy by trailers or mobile homes for resident dwelling purposes for periods of 30 consecutive days or more.

(3) "Council" means the tourism advisory council established in [2-15-1816](#).

(4) (a) "Facility" means a building containing individual sleeping rooms or suites, providing overnight lodging facilities for periods of less than 30 days to the general public for compensation. The term includes a facility represented to the public as a hotel, motel, campground, resort, dormitory, condominium inn, dude ranch, guest ranch, hostel, public lodging house, or bed and breakfast facility.

(b) The term does not include any health care facility, as defined in [50-5-101](#), any facility owned by a corporation organized under Title 35, chapter 2 or 3, that is used primarily by persons under the age of 18 years for camping purposes, any hotel, motel, hostel, public lodging house, or bed and breakfast facility whose average daily accommodation charge for single occupancy does not exceed 60% of the amount authorized under [2-18-501](#) for the actual cost of lodging for travel within the state of Montana, or any other facility that is rented solely on a monthly basis or for a period of 30 days or more.

(5) "Nonprofit convention and visitors bureau" means a nonprofit corporation organized under Montana law and recognized by a majority of the governing body in the city, consolidated city-county, resort area, or resort area district in which the bureau is located.

(6) "Regional nonprofit tourism corporation" means a nonprofit corporation organized under Montana law and recognized by the council as the entity for promoting tourism within one of several regions established by executive order of the governor.

(7) "Resort area" means an area established pursuant to [7-6-1508](#).

(8) "Resort area district" has the meaning provided in [7-6-1531](#).

**History:** En. Sec. 1, Ch. 607, L. 1987; amd. Sec. 1, Ch. 195, L. 2001.

**15-65-102. Rulemaking authority.** The department of revenue shall adopt such rules as may be necessary to implement and administer this part.

**History:** En. Sec. 11, Ch. 607, L. 1987.

**15-65-103 through 15-65-110 reserved.**

**15-65-111. Tax rate. (1) There is imposed on the user of a facility a tax at a rate equal to 4% of the accommodation charge collected by the facility.**

(2) Accommodation charges do not include charges for rooms used for purposes other than lodging.

**History: En. Sec. 2, Ch. 607, L. 1987.**

**15-65-112. Collection and reporting. (1) The owner or operator of a facility shall collect the tax imposed by 15-65-111.**

(2) The owner or operator shall report to the department of revenue, at the end of each calendar quarter, the gross receipts collected during that quarter attributable to accommodation charges for the use of the facility. The report is due on or before the last day of the month following the end of the calendar quarter and must be accompanied by a payment in an amount equal to the tax required to be collected under subsection (1).

**History: En. Sec. 3, Ch. 607, L. 1987; amd. Sec. 5, Ch. 676, L. 1991.**

**15-65-113. Audits -- records. (1) The department of revenue may audit the books and records of any owner or operator to ensure that the proper amount of tax imposed by 15-65-111 has been collected. An audit may be done on the premises of the owner or operator of a facility or at any other convenient location.**

(2) The department may request the owner or operator of a facility to provide the department with books, ledgers, registers, or other documents necessary to verify the correct amount of tax.

(3) The owner or operator of a facility shall maintain and have available for inspection by the department books, ledgers, registers, or other documents showing the collection of accommodation charges for the preceding 5 years.

(4) Except in the case of a person who, with intent to evade the tax, purposely or knowingly files a false or fraudulent return violating the provisions of this part, the amount of tax due under any return must be determined by the department within 5 years after the return is made, and the department thereafter is barred from revising any such return or recomputing the tax due thereon, and no proceeding in court for the collection of the tax may be instituted unless notice of any additional tax is provided within such period.

(5) An application for revision may be filed with the department by an owner or operator of a facility within 5 years from the original due date of the return.

**History: En. Sec. 4, Ch. 607, L. 1987.**

**15-65-114. Registration number -- application to department. (1) The owner or operator of a facility shall apply to the department of revenue for a registration number.**

- (2) The application must be made on a form provided by the department.
- (3) Upon completion of the application and delivery of the application to the department, the department must assign a registration number to the owner, operator, or facility, as appropriate.

**History:** En. Sec. 5, Ch. 607, L. 1987.

**15-65-115. Failure to pay or file -- penalty -- review -- interest.** (1) An owner or operator of a facility who fails to file the report as required by [15-65-112](#) must be assessed a penalty as provided in [15-1-216](#). The department may waive any penalty as provided in [15-1-206](#).

(2) An owner or operator of a facility who fails to make payment or fails to report and make payment as required by [15-65-112](#) must be assessed penalty and interest as provided in [15-1-216](#). The department may waive any penalty pursuant to [15-1-206](#).

(3) (a) If an owner or operator of a facility fails to file the report required by [15-65-112](#) or if the department determines that the report understates the amount of tax due, the department may determine the amount of the tax due and assess that amount against the owner or operator. The provisions of [15-1-211](#) apply to any assessment by the department. The taxpayer may seek review of the assessment pursuant to [15-1-211](#).

(b) When a deficiency is determined and the tax becomes final, the department shall mail a notice and demand for payment to the owner or operator. The tax is due and payable at the expiration of 30 days after the notice and demand were mailed. Interest on any deficiency assessment must be computed as provided in [15-1-216](#).

**History:** En. Sec. 6, Ch. 607, L. 1987; amd. Secs. 6, 19, Ch. 676, L. 1991; amd. Sec. 26, Ch. 811, L. 1991; amd. Sec. 45, Ch. 427, L. 1999.

**15-65-116. Credit for overpayment -- interest on overpayment.** (1) If the department determines that the amount of tax, penalty, or interest paid for any year is more than the amount due, the amount of the overpayment must be credited against any tax, penalty, or interest then due from the taxpayer and the balance refunded to the taxpayer, to the taxpayer's successor through reorganization, merger, or consolidation, or to the taxpayer's shareholders upon dissolution.

(2) Except as provided in subsection (3), interest is allowed on overpayments at the same rate as is charged on unpaid taxes, as provided in [15-1-216](#), from the due date of the return or from the date of overpayment, whichever is later, to the date the department approves refunding or crediting of the overpayment.

(3) (a) Interest does not accrue during any period in which the processing of a claim for refund is delayed more than 30 days by reason of failure of the taxpayer to furnish information requested by the department for the purpose of verifying the amount of the overpayment.

(b) Interest is not allowed:

(i) if the overpayment is refunded within 6 months from the date the return is due or from the date the return is filed, whichever is later; or

(ii) if the amount of interest is less than \$1.

(c) Only a payment made incident to a bona fide and orderly discharge of actual tax liability or one reasonably assumed to be imposed by this chapter is considered an overpayment with respect to which interest is allowable.

**History:** En. Sec. 12, Ch. 676, L. 1991; amd. Sec. 46, Ch. 427, L. 1999.

**15-65-117 through 15-65-120 reserved.**

**15-65-121. (Temporary) Distribution of tax proceeds.** (1) The proceeds of the tax imposed by **15-65-111** must, in accordance with the provisions of **15-1-501**, be deposited in an account in the state special revenue fund to the credit of the department. The department may spend from that account in accordance with an expenditure appropriation by the legislature based on an estimate of the costs of collecting and disbursing the proceeds of the tax. Before allocating the balance of the tax proceeds in accordance with the provisions of **15-1-501** and as provided in subsections (1)(a) through (1)(e) of this section, the department shall determine the expenditures by state agencies for in-state lodging for each reporting period and deduct 4% of that amount from the tax proceeds received each reporting period. The amount deducted must be deposited in the fund or funds from which in-state lodging expenditures were paid by state agencies. The amount of \$400,000 each year must be deposited in the Montana heritage preservation and development account provided for in **22-3-1004**. The balance of the tax proceeds received each reporting period and not deducted pursuant to the expenditure appropriation, deposited in the fund or funds from which in-state lodging expenditures were paid by state agencies, or deposited in the heritage preservation and development account is statutorily appropriated, as provided in **17-7-502**, and must be transferred to an account in the state special revenue fund to the credit of the department of commerce for tourism promotion and promotion of the state as a location for the production of motion pictures and television commercials, to the Montana historical society, to the university system, and to the department of fish, wildlife, and parks, as follows:

(a) 1% to the Montana historical society to be used for the installation or maintenance of roadside historical signs and historic sites;

(b) 2.5% to the university system for the establishment and maintenance of a Montana travel research program;

(c) 6.5% to the department of fish, wildlife, and parks for the maintenance of facilities in state parks that have both resident and nonresident use;

(d) 67.5% to be used directly by the department of commerce; and

(e) (i) except as provided in subsection (1)(e)(ii), 22.5% to be distributed by the department to regional nonprofit tourism corporations in the ratio of the proceeds collected in each tourism region to the total proceeds collected statewide; and

(ii) if 22.5% of the proceeds collected annually within the limits of a city, consolidated city-county, resort area, or resort area district exceeds \$35,000, 50% of the amount available for distribution to the regional nonprofit tourism corporation in the region

where the city, consolidated city-county, resort area, or resort area district is located, to be distributed to the nonprofit convention and visitors bureau in that city, consolidated city-county, resort area, or resort area district.

(2) If a city, consolidated city-county, resort area, or resort area district qualifies under this section for funds but fails to either recognize a nonprofit convention and visitors bureau or submit and gain approval for an annual marketing plan as required in [15-65-122](#), then those funds must be allocated to the regional nonprofit tourism corporation in the region in which the city, consolidated city-county, resort area, or resort area district is located.

(3) If a regional nonprofit tourism corporation fails to submit and gain approval for an annual marketing plan as required in [15-65-122](#), then those funds otherwise allocated to the regional nonprofit tourism corporation may be used by the department of commerce for tourism promotion and promotion of the state as a location for the production of motion pictures and television commercials. (*Effective July 1, 2007*)

**15-65-121. (*Effective July 1, 2007*) . Distribution of tax proceeds. (1) The proceeds of the tax imposed by [15-65-111](#) must, in accordance with the provisions of [15-1-501](#), be deposited in an account in the state special revenue fund to the credit of the department. The department may spend from that account in accordance with an expenditure appropriation by the legislature based on an estimate of the costs of collecting and disbursing the proceeds of the tax. Before allocating the balance of the tax proceeds in accordance with the provisions of [15-1-501](#) and as provided in subsections (1)(a) through (1)(e) of this section, the department shall determine the expenditures by state agencies for in-state lodging for each reporting period and deduct 4% of that amount from the tax proceeds received each reporting period. The amount deducted must be deposited in the fund or funds from which in-state lodging expenditures were paid by state agencies. The balance of the tax proceeds received each reporting period and not deducted pursuant to the expenditure appropriation or deposited in the fund or funds from which in-state lodging expenditures were paid by state agencies is statutorily appropriated, as provided in [17-7-502](#), and must be transferred to an account in the state special revenue fund to the credit of the department of commerce for tourism promotion and promotion of the state as a location for the production of motion pictures and television commercials, to the Montana historical society, to the university system, and to the department of fish, wildlife, and parks, as follows:**

(a) 1% to the Montana historical society to be used for the installation or maintenance of roadside historical signs and historic sites;

(b) 2.5% to the university system for the establishment and maintenance of a Montana travel research program;

(c) 6.5% to the department of fish, wildlife, and parks for the maintenance of facilities in state parks that have both resident and nonresident use;

(d) 67.5% to be used directly by the department of commerce; and

(e) (i) except as provided in subsection (1)(e)(ii), 22.5% to be distributed by the department to regional nonprofit tourism corporations in the ratio of the proceeds collected in each tourism region to the total proceeds collected statewide; and

(ii) if 22.5% of the proceeds collected annually within the limits of a city, consolidated city-county, resort area, or resort area district exceeds \$35,000, 50% of the amount available for distribution to the regional nonprofit tourism corporation in the region where the city, consolidated city-county, resort area, or resort area district is located, to be distributed to the nonprofit convention and visitors bureau in that city, consolidated city-county, resort area, or resort area district.

(2) If a city, consolidated city-county, resort area, or resort area district qualifies under this section for funds but fails to either recognize a nonprofit convention and visitors bureau or submit and gain approval for an annual marketing plan as required in [15-65-122](#), then those funds must be allocated to the regional nonprofit tourism corporation in the region in which the city, consolidated city-county, resort area, or resort area district is located.

(3) If a regional nonprofit tourism corporation fails to submit and gain approval for an annual marketing plan as required in [15-65-122](#), then those funds otherwise allocated to the regional nonprofit tourism corporation may be used by the department of commerce for tourism promotion and promotion of the state as a location for the production of motion pictures and television commercials.

**History:** En. Sec. 7, Ch. 607, L. 1987; amd. Sec. 15, Ch. 607, L. 1987; amd. Sec. 18, Ch. 83, L. 1989; amd. Sec. 2, Ch. 647, L. 1989; amd. Sec. 1, Ch. 11, Sp. L. July 1992; amd. Sec. 16, Ch. 455, L. 1993; amd. Sec. 1, Ch. 574, L. 1993; amd. Sec. 20, Ch. 18, L. 1995; amd. Sec. 2, Ch. 442, L. 1995; amd. Sec. 11, Ch. 469, L. 1997; amd. Sec. 1, Ch. 490, L. 1999; amd. Sec. 2, Ch. 195, L. 2001; amd. Sec. 1, Ch. 469, L. 2001.

**15-65-122. Qualification of nonprofit entities for receipt of funds -- limitation on administrative costs. (1) The department of revenue shall provide the council with quarterly reports of regional tax proceeds and tax proceeds of cities, consolidated city-counties, resort areas, and resort area districts that qualify for disbursement of funds under [15-65-121](#).**

(2) Funds may not be disbursed to a regional nonprofit tourism corporation or nonprofit convention and visitors bureau until that entity has submitted an annual marketing plan to the council and that plan has been approved by the council.

(3) A maximum of 20% of the funds received by a regional nonprofit tourism corporation or nonprofit convention and visitors bureau may be used for administrative purposes as defined by the council.

**History:** En. Sec. 8, Ch. 607, L. 1987; amd. Sec. 3, Ch. 195, L. 2001.

**15-65-123 through 15-65-130 reserved.**

**15-65-131. State agencies to account for in-state lodging expenditures. Each state agency shall account for in-state lodging expenditures in a manner that will enable the department to determine total expenditures for in-state lodging by state agencies in order to make an allocation of a portion of the tax proceeds imposed by [15-65-111](#) to the appropriate fund or funds as provided in [15-65-121](#). Unless prohibited under terms of original receipt of the funds used to pay the lodging facility use tax, each**

**fund shall reimburse the state general fund for the deposit made pursuant to [15-65-121](#).**

**History: En. Sec. 1, Ch. 647, L. 1989; amd. Sec. 2, Ch. 490, L. 1999.**

**15-65-132 through 15-65-135 reserved.**

**15-65-136. Terminated. Sec. 39, Ch. 15, Sp. L. July 1992.**

**History: En. Sec. 15, Ch. 15, Sp. L. July 1992; amd. Sec. 17, Ch. 455, L. 1993.**